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8 Counsel to Receiver Sherwood
9 Partners, Inc.

7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 v.

14 JOHN B. BIVONA; SADDLE RIVER
15 ADVISERS, LLC; SRA MANAGEMENT
ASSOCIATES, LLC; FRANK GREGORY
MAZZOLA

16 Defendants.

17 } Case No. 3:16-cv-1386
18 } RECEIVER'S MOTION FOR
19 } THE APPROVAL OF FEES
20 } AND EXPENSES FOR THE
21 } PERIOD APRIL 1 TO JUNE
22 } 30, 2018, FOR THE
23 } RECEIVER AND COUNSEL
24 } Date: October 23, 2018
25 } Time: 1:30 PM
26 } Courtroom: 5
27 } Judge: Edward M. Chen
28 }

19 **PLEASE TAKE NOTICE** that on October 23, 2018, in
20 Courtroom 5 at 1:30 PM, the Receiver in the above captioned matter,
21 Sherwood Partners, Inc. ("Sherwood"), will move this Honorable Court for
22 the approval of the fees and expenses of Sherwood and its counsel,
23 Gartenberg, Gelfand & Hayton. This Motion consists of the Notice of
24 Motion, Motion and the accompanying declaration of Georgiana Nertea of
25 Sherwood, including Exhibits A, B and C appended thereto, which reflect
26 the time billings and expenses of the Receiver and the required SFAR
27 accounting report of the Receivership Estate; and the declaration of John
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1 W. Cotton of Gartenberg, Gelfand & Hayton, including Exhibit A appended
2 thereto, which reflects its time and expenses.

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6 Dated: September 17, 2018

GARTENBERG GELFAND HAYTON
7 LLP

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9 By: /s/ John W. Cotton
John W. Cotton
Counsel to the Receiver

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MOTION FOR PAYMENT OF RECEIVER'S FEES

I. Background

3 On October 11, 2016, this Honorable Court issued an Order of
4 Appointment of Receiver (the "Order") and thereby appointed Sherwood
5 Partners, Inc. ("Sherwood") as Receiver in this matter. The Order also
6 appointed John W. Cotton ("Cotton") of Gartenberg, Gelfand & Hayton LLP
7 as Counsel to the Receiver. Previously, the Receiver and its counsel
8 submitted interim applications for fees and expenses for the time periods
9 October 11, 2016, to March 31, 2017 (See: Docket Nos. 207 and 215, First
10 Quarterly Fee Application filed on July 13, 2017, and approved on July 25,
11 2017 and August 11, 2017); April 1 to June 30, 2017 (See: Docket No. 275,
12 Second Quarterly Fee Application filed on October 19, 2017 and approved,
13 but with a 20% holdback for Sherwood on *both* the first (retroactive) and
14 second fee applications, on November 16, 2017); July 1 to September 30,
15 2017 (See: Docket No. 303, Third Quarterly Fee Application, filed on
16 December 26, 2017 and approved by the Court on January 25, 2018);
17 October 1 to December 31, 2017 (See: Docket No. 315, Fourth Quarterly
18 Fee Application, approved by the Court on March 13, 2018); and January 1
19 to March 31, 2018 (See: Docket No. 387, Fifth Quarterly Fee Application,
20 approved by the Court on August 2, 2018, but with an additional hold-back
21 of \$7,507.)

22 The total fees and expenses of the Receiver approved by the Court and
23 paid to date total \$603,214.60¹ and the total fees and expenses of the
24 Receiver's counsel approved by the Court and paid to date are \$189,238.
25 The total fees and expenses of the Receiver being requested in this Sixth

27 ¹ This amount is exclusive of the amount of \$203,925.53 paid to Sherwood for
28 work performed during the period March to October, 2016, when it acted as
Independent Monitor.

1 Quarterly Motion (the “Motion”) are \$71,777.16² and the total fees and
 2 expenses of the Receiver’s counsel requested in this Motion, are
 3 \$25,111.50.

4 Sherwood has, after considerable discussion with the staff of
 5 plaintiff SEC, reduced the amount of the original invoice for the current
 6 time period, by \$6,050. Declaration of Georgiana Nertea (“Nertea Decl.”)
 7 at ¶ 3. The reason for this courtesy reduction is that during this billing
 8 period, Sherwood encountered the unanticipated departure of several
 9 lower cost staff assigned to this matter, and due to timeliness and
 10 necessity, had to complete their assigned tasks with more senior
 11 personnel. This resulted in a slightly higher billing charge than required
 12 for the tasks performed, and therefore Sherwood reduced 60.50 hours of
 13 more senior time, by \$100 per hour, bringing the effective hourly rate for
 14 this time to \$195 per hour typically charged for lower skilled staff. Nertea
 15 Decl., at ¶ 3.

16 In this Motion, Sherwood through Georgiana Nertea (“Nertea”),
 17 requests that this Court approve its Sixth Quarterly fees and expenses as
 18 well as that of its Counsel, for the time period April 1, 2018 to and
 19 including June 30, 2018. The Motion consists of the accompanying
 20 Declaration of Nertea, the time records of Sherwood (Exhibit A to the
 21 Declaration of Nertea), a narrative of the work performed by Sherwood
 22 (Exhibit B to the Declaration of Nertea) and the SEC’s Standard Fund
 23 Accounting Report (“SFAR”, Exhibit C to the Declaration of Nertea). The
 24

25 ² The amount of \$71,777.16 represents the work and expenses of Sherwood for
 26 the 2nd Quarter of 2018; Sherwood also seeks an additional amount of \$741.82
 27 which was inadvertently left out of Docket No. 387, due to the oversight of the
 28 Receiver’s counsel in drafting the Court’s order approving the fees for the 1st
 Quarter of 2018, where this amount representing the Receiver’s disbursements
 for that quarter was inadvertently left out. Declaration of Cotton at ¶ 7.

1 Receiver also requests approval for the fees of his counsel, John W. Cotton
 2 for the same time period. The Declaration of John W. Cotton with
 3 accompanying billing statements from his firm (Exhibit A to the
 4 Declaration of Cotton) also accompanies this Motion.

5 **II. The Fee Application of Sherwood**

6 As the Declaration of Nertea sets forth, the interim period for
 7 which it makes this Motion is April 1, 2018 to and including June 30, 2018.
 8 During this time period, the personnel who worked on this matter, and
 9 their discounted hourly rates include Mr. Andrew De Camara (\$510), and
 10 Georgiana Nertea (\$295). Sherwood's total charge for time and
 11 disbursements in this interim fee request is \$ 71,777.16. This represents a
 12 total of 257.80 hours, or 85.93 hours per month. Nertea Decl., at ¶ 3.

13 Sherwood has applied a 15% reduction to its standard rate. Nertea
 14 Decl., at ¶ 3. Nertea has personally reviewed all the time spent by
 15 Sherwood personnel on Receivership tasks and has attested to the
 16 accuracy and appropriateness of the time billed and has set forth the
 17 major work categories in which time was spent. Nertea Decl., at ¶¶ 4 and 5.
 18 Finally, Nertea has prepared the required SEC Standard Fund Accounting
 19 Report, or "SFAR", for the period covered by this Motion. Nertea Decl., at ¶
 20 5.

21 Nertea has broken down the total billed hours to the following
 22 organized task categories: Asset Management (53.20 hours); Investor and
 23 Creditor relations (76.10 hours); Investors' Group Communications (2.30
 24 hours); Records Management (8.10 hours); Case Support and
 25 Administration (67.00 hours); SEC Support (9.40 hours); Claims and
 26 Litigation (7.10 hours); Solis Associates Fund, LLC (9.40 hours); and Tax
 27 Matters (25.20) Nertea Decl., at ¶ 4.

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1 As set forth in footnote 2 above, the Receiver's counsel inadvertently
 2 omitted to include the amount of \$741.82 from the Court's prior order
 3 approving Sherwood's fees, which represented disbursements for the 1st
 4 Quarter of 2018. The approved invoice (Decl. of Hartheimer, Ex. A) set out
 5 the disbursement amount, but it was left out of the total put into Docket
 6 No. 387 due to the Receiver's counsel's omitting to add it into the
 7 proposed order which became Docket no. 387. Cotton Decl. at ¶ 7. The
 8 addition of this amount will make the total approved by the Court for the
 9 Receiver in this application \$72,518.98; however with \$35,888.58 being
 10 held until the conclusion of the Receivership, or as earlier ordered by the
 11 Court.

12 **III. The Fee Application of Sherwood's Counsel**

13 As the Declaration of John Cotton of Gartenberg, Gelfand & Hayton
 14 ("GG&H") sets forth, the period for which it makes its sixth interim fee
 15 application is April 1, 2018 to and including June 30, 2018. All time spent
 16 on Receivership legal matters were undertaken by Cotton alone, at a
 17 reduced billing rate of \$450 an hour. GG & H's total charge for time
 18 (\$24,885) and disbursements (\$226.50) in this Application is \$25,111.50.
 19 This represents a total of 55.8 hours, or 18.6 hours per month. Cotton
 20 Decl., at ¶ 3. GG & H has applied a 15% courtesy reduction to its standard
 21 rate and has only used personnel appropriate to the level of work being
 22 undertaken. Cotton Decl., at ¶ 3. Cotton has personally reviewed all the
 23 time spent on Receivership tasks and has attested to the accuracy and
 24 appropriateness of the time billed and has set forth the major work
 25 categories in which time was spent. Cotton Decl., at ¶¶ 4 to 6.

26 During the time period of this Motion, the work performed by
 27 Cotton consisted of the following work categories: responding to and
 28 advising the Receiver (23.2 hours); responding to and meeting with the

1 SEC concerning SRA IG investor group concerns and the Joint Plan of
 2 Distribution (8.3 hours); review, preparation of and filing court
 3 documents (10.5 hours); responding to and attending investor and
 4 Defendants' counsel calls and related questions (4.2 hours); and handling
 5 issues and communications regarding Estate investments: Mongo DB,
 6 EAC, Practice Fusion, etc. (9.6 hours). Cotton Declaration at ¶ 4.

7 **IV. The SEC Has Reviewed the Accompanying Fee Invoices**

8 The Receiver and its counsel timely submitted their
 9 accompanying fee applications to the Plaintiff SEC for its initial review as
 10 required by the Court. The SEC and Receiver, as noted on Page 4, lines 4
 11 to 15, thereafter held numerous discussions regarding the Receiver's
 12 invoices, as a result of which the Receiver has substantially reduced its
 13 fees for this time period. Nertea Declaration at ¶ 4. As a result, the SEC
 14 has indicated that it has no objection to the fees now applied for in this
 15 Motion, for either the Receiver, or its counsel. However, the SEC would
 16 recommend to the Court that it set a 50% holdback on the Receiver's fees,
 17 in the amount of \$35,888.58. The Receiver has agreed to this holdback
 18 amount. At this time the SEC is not recommending any holdback for the
 19 Receiver's counsel. (The amount of holdback is set forth in the
 20 accompanying proposed order.)

21 **V. Conclusion**

22 For the forgoing reasons, the Receiver and his counsel request that
 23 the Court approve the Motion for Sixth Quarterly Fees by signing the
 24 attached Proposed Order.

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1 Dated: September 17, 2018

2 GARTENBERG GELFAND HAYTON
3 LLP

4 By: /s/ John W. Cotton

5 John W. Cotton
6 Counsel to the Receiver

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